

## Item SP04-20 Response Form

**Title:** **Disqualification of Appellate Justices** (adopt Canon 3E(3)(h) of the California Code of Judicial Ethics)

- ☐ **Agree** with proposed changes
- ☐ **Agree** with proposed changes **only if modified**
- ☐ **Do not agree** with proposed changes

Comments: \_\_\_\_\_

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**Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Organization:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**City, State, Zip:** \_\_\_\_\_

Please **write** or **fax** or **respond using the Internet** to:

**Address:** Ms. Romunda Price,  
Administrative Office of the Courts  
455 Golden Gate Avenue, San Francisco, CA 94102

**Fax:** (415) 865-7664      **Attention:** Romunda Price  
**Internet:** [www.courtinfo.ca.gov/invitationstocomment](http://www.courtinfo.ca.gov/invitationstocomment)

<b>DEADLINE FOR COMMENT: 5:00 P.M Friday, October 1, 2004</b>
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Your comments may be written on this *Response Form* or directly on the proposal or as a letter. If you are not commenting directly on this sheet please remember to attach it to your comments for identification purposes.

<i>Circulation for comment does not imply endorsement by the California Supreme Court.</i>
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Title	<b>Disqualification of Appellate Justices</b> (adopt Canon 3E(3)(h) of the California Code of Judicial Ethics)
Summary	This proposed amendment provides that an appellate justice who has a current arrangement concerning prospective employment as a private alternative dispute resolution provider or is participating in, or within the past two years has participated in, discussions about such prospective employment is disqualified under certain circumstances.
Source	Supreme Court Advisory Committee on the Code of Judicial Ethics
Staff	Mark Jacobson, 415-865-7898
Discussion	<p>Code of Civil Procedure section 170.1 et seq. set forth the grounds for disqualification of trial court judges in California. In 2002, the Legislature amended section 170.1 by adding subdivision (a)(8). This subdivision provides that a judge who has a current arrangement concerning prospective employment as a private alternative dispute resolution (ADR) provider or is participating in, or within the past two years has participated in, discussions about such prospective employment is disqualified under certain circumstances. Under the statute, such a judge is disqualified if either 1) the arrangement is, or the discussion was, with a party to the proceeding or 2) the matter before the judge includes issues relating to either the enforcement of an agreement to submit a dispute to ADR or the appointment or use of an ADR provider.</p> <p>The Supreme Court Advisory Committee on the Code of Judicial Ethics has recommended to the Supreme Court that it circulate for public comment a proposal that section 170.1(a)(8) be incorporated into canon 3E(3), which contains disqualification provisions for appellate justices. The committee concluded that there is no legitimate basis for distinguishing between superior court judges and appellate justices in terms of disqualification in this area.</p> <p>The text of the proposed amendment to the canon is attached.</p>
	Attachment

Canon 3E(3)(h) of the California Code of Judicial Ethics would be adopted effective January 1, 2005, to read:

(3) An appellate justice shall disqualify himself or herself in any proceeding if for any reason: (i) the justice believes his or her recusal would further the interest of justice; or (ii) the justice substantially doubts his or her capacity to be impartial; or (iii) the circumstances are such that a reasonable person aware of the facts would doubt the justice's ability to be impartial. Disqualification is required in the following instances:

(a)–(g) \* \* \*

(h) The justice has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two years has participated in, discussions regarding such prospective employment or service, and either of the following applies:

- (i) The arrangement is, or the discussion was, with a party to the proceeding;
- (ii) The matter before the justice includes issues relating to the enforcement of an agreement to submit a dispute to alternative dispute resolution or the appointment or use of a dispute resolution neutral.

For purposes of this paragraph, “party” includes the parent, subsidiary, or other legal affiliate of any entity that is a party and is involved in the transaction, contract, or facts that gave rise to the issues subject to the proceeding.

For purposes of this canon, “dispute resolution neutral” means an arbitrator, a mediator, a temporary judge appointed under section 21 of article VI of the California Constitution, a referee appointed under Code of Civil Procedure section 638 or 639, a special master, a neutral evaluator, a settlement officer, or a settlement facilitator.